

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ARCHIE C. CULTON, JR.,

Plaintiff,

v.

ORDER
04-CV-919

NEW YORK STATE DEPARTMENT
OF CORRECTIONAL SERVICES,

Defendant.

This case was referred to Magistrate Judge Leslie G. Foschio, pursuant to 28 U.S.C. § 636(b)(1), on January 6, 2005. On January 30, 2006, defendant filed a motion to dismiss for failure to prosecute. On September 29, 2006, Magistrate Judge Foschio filed a Report and Recommendation, recommending that defendant's motion be granted.

Plaintiff, who is proceeding *pro se*, filed objections to the Report and Recommendation and defendant filed a response thereto. Oral argument on the objections was held on February 15, 2007 at 9:00 a.m., but plaintiff failed to appear.

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a de novo determination of those portions of the Report and Recommendation to which objections have been made. Upon a de novo review of the Report and

Recommendation, and after reviewing the submissions and hearing argument, the Court adopts the proposed findings of the Report and Recommendation.

Accordingly, for the reasons set forth in Magistrate Judge Foschio's Report and Recommendation, defendant's motion to dismiss for failure to prosecute is granted and the Clerk of Court is directed to take all steps necessary to close the case.

SO ORDERED.

s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

DATED: March 6, 2007